

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN DOE 1; JOHN DOE 2; JANE
DOE 1; JANE DOE 2; JANE DOE 3;
and all persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS;
STEPHEN SINCLAIR,

Defendants.

NO: 2:21-CV-5059-TOR

THIRD AMENDED BENCH TRIAL
SCHEDULING ORDER

BEFORE THE COURT is the Parties' Stipulated Motion to Extend Pretrial
Deadlines and Trial Setting. ECF No. 110. The Court has reviewed the Stipulated
Motion, the file herein, and is fully informed. The Motion is **GRANTED. IT IS
ORDERED** that the unexpired deadlines of the Second Amended Bench Trial
Scheduling Order (ECF No. 106) are amended as follow:

* * *

5. Rule 26(a)(2) Expert Identification and Reports

The parties are cautioned that failure to timely identify experts or provide

1 reports in accordance with Rule 26 and this scheduling order may result in
2 exclusion of such testimony absent good reason. *See Wong v. Regents of the Univ.*
3 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005).

4 The parties shall identify their experts and serve those experts' Rule 26(a)(2)
5 reports on all other parties no later than **February 24, 2023**. The parties shall also
6 provide dates for which their experts can be available for deposition.

7 The parties shall identify their rebuttal experts and serve those experts' Rule
8 26(a)(2) reports on all other parties no later than **March 17, 2023**. The parties
9 shall also provide dates for which their experts can be available for deposition.

10 **6. Discovery Cutoff**

11 **A. Generally**

12 All discovery, including depositions and perpetuation depositions, shall be
13 completed by **April 14, 2023** ("Discovery Cutoff"). To be timely, discovery
14 requests must be served sufficiently in advance of the deadline to allow for timely
15 response by the cutoff date. The parties shall not file discovery, except those
16 portions necessary to support motions or objections.

17 **B. Depositions, Interrogatories, Requests for** 18 **Production/Admission**

19 Unless otherwise stipulated, no more than 10 depositions up to seven hours
20 long, may be taken by the plaintiffs, or by the defendants, or by third-party
defendants. Fed. R. Civ. P. 30(a)(2)(A) and (d)(1).

1 Unless otherwise stipulated, any one party may serve no more than 25 written
2 interrogatories, including discrete subparts, on any other party. Fed. R. Civ. P.
3 33(a)(1) and advisory committee notes (1993) explaining “discrete subparts”.

4 Unless otherwise stipulated, any one party may serve no more than 30
5 requests for production, including discrete subparts, on any other party. LCivR
6 34(d).

7 Unless otherwise stipulated, any one party may serve no more than 15
8 requests for admission, including discrete subparts, on any other party. LCivR
9 36(c).

10 A party needing relief from these limitations should timely seek relief from
11 the Court by motion.

12 **C. Protective Orders**

13 Any stipulation or motion for a confidentiality agreement or protective order
14 must be timely filed so as not to delay the discovery process or the Court’s
15 deadlines. If confidential records are attached to court filings, “compelling
16 reasons” must be shown to seal records attached to a dispositive motion and “good
17 cause” must be shown to seal records attached to a non-dispositive motion.

18 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.
19 2006).

1 **D. Motions to Compel**

2 To avoid wasted time and expense, parties may contact chambers to schedule
3 a telephonic conference to obtain an expedited ruling on discovery disputes. Prior
4 to contacting chambers, counsel shall confer and determine an agreed upon hearing
5 date and time. Motions to compel seeking sanctions shall be filed in writing.

6 **7. Dispositive and *Daubert* Motions**

7 All dispositive and *Daubert* motions shall be filed on or before **April 21,**
8 **2023.** Responses and replies to dispositive and *Daubert* motions shall comply with
9 LCivR 7. No supplemental responses or supplemental replies to any dispositive or
10 *Daubert* motion may be filed without Court permission.

11 Dispositive and *Daubert* motions shall be noted for hearing at least **fifty (50)**
12 **days** after the date of filing.

13 **8. Motion Practice**

14 **A. Notice of Hearing**

15 The parties are to comply with LCivR 7(i) when noting motions for hearing.
16 If oral argument is sought by a party, counsel shall first confer and determine an
17 agreeable hearing date and time, and then contact chambers to confirm the Court's
18 availability for the agreed upon hearing date and time. All non-dispositive motion
19 hearings shall be conducted telephonically, unless in-person argument is approved
20 by the Court. Dispositive motion hearings in which oral argument has been

1 requested will be set for in-person or telephonic appearance unless otherwise
2 directed by the Court. The parties may use cellular phones during telephonic
3 hearings, but not in speaker mode and provided the caller is in an area with
4 adequate cellular service and minimal background noise.

5 **B. Motions to Expedite**

6 If there is a need to have a motion heard on an expedited basis, the party must
7 file a Motion for Expedited Hearing and an accompanying memorandum (or
8 declaration) establishing the need for an expedited hearing. The Motion for
9 Expedited Hearing shall be noted for hearing, without oral argument, no earlier
10 than two (2) days after the filing of the motion. The local rules do not allow
11 motions (including stipulated motions) to be noted for hearing for the same day
12 they are filed.

13 **C. Citing Previously-Filed Documents**

14 All references to a previously filed document shall cite to the electronic case
15 filing (ECF) record number and page number within that ECF record, in the
16 following format, “ECF No. ___ at ___.” Such documents shall not be attached as
17 exhibits.

18 **D. Reliance on Deposition Testimony**

19 When a party relies on deposition testimony to support a position it takes in
20 support or opposition to an issue, that party shall provide the Court with the

1 pertinent excerpts of the deposition testimony relied upon and shall cite to page
2 and line numbers of the deposition it believes supports its position. *See generally*
3 LCivR 56(c). Submission of the entire deposition and/or failure to cite to specific
4 portions of the deposition may result in the submission being stricken from the
5 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

6 **E. Supplemental Responses or Replies**

7 No supplemental responses or supplemental replies to any motion may be
8 filed unless the Court grants a motion to file such documents.

9 **F. Motions to Reconsider**

10 Motions to Reconsider are disfavored. Motions must show manifest error in
11 the prior ruling or reveal new facts or legal authority which could not have been
12 brought to the Court's attention earlier. The motion shall be noted for expedited
13 hearing without oral argument seven days after it is filed. No response to a motion
14 for reconsideration need be filed unless requested by the Court. No motion for
15 reconsideration will be granted without such a request by the Court.

16 **G. Decisions on Motions**

17 The parties may call chambers to inquire about the status of a decision on a
18 motion if the Court has not issued an order within thirty **(30) days after** the
19 hearing on the motion.

1 **9. Witness/Exhibit Lists**

2 Witness/Exhibit lists shall be filed and served and exhibits made available for
3 inspection or copies provided to the parties on or before **June 5, 2023**.

4 **A. Witness Lists**

5 Witness lists shall include a brief description of the witness, a brief summary
6 of the witness' anticipated testimony, whether the witness will be called as an
7 expert, and any known trial date/time conflicts the witness may have.

8 **B. Exhibit Lists**

9 Exhibit lists shall include a brief description of the exhibit. All exhibits shall
10 be pre-marked; Plaintiffs' exhibits shall be numbered 1-499; Defendants' exhibits
11 shall be numbered 500-999. Exhibits shall be numbered in the lower right corner
12 of the exhibit if practicable.

13 **C. Objections**

14 Objections to witnesses/exhibits shall be filed and served on or before **June**
15 **12, 2023**, AND SHALL BE HEARD AT THE PRETRIAL CONFERENCE. All
16 objections to witnesses shall set forth a legal basis and explanation for the
17 objection. Objections to an exhibit or portion thereof, shall be accompanied by a
18 full and complete copy of the exhibit in question and a short legal explanation for
19 the objection. The party seeking the admission of the witness or exhibit has five
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1 (5) days, excluding federal holidays and weekends, to file a response to the
2 opposing party's objection; no reply shall be filed.

3 **10. Deposition Designations**

4 **A. Generally**

5 Designation of substantive, as opposed to impeachment, deposition or prior
6 testimony to be used at trial shall be highlighted in yellow by Plaintiff or in blue by
7 Defendant in a complete transcript of the deposition or prior testimony and served
8 but not filed on or before **June 5, 2023**.

9 **B. Cross-Designations**

10 Cross-designations shall be highlighted in yellow by Plaintiff or in blue by
11 Defendant in the transcript containing the opposing party's initial designations and
12 shall be served but not filed on or before **June 12, 2023**.

13 **11. Motions in Limine**

14 All unresolved substantive or evidentiary issues that may foreseeably arise
15 during trial shall be addressed by motions in limine to be filed and served on or
16 before **June 12, 2023**. Responses to motions in limine shall be filed and served on
17 or before **June 19, 2023**. Such motions will be addressed and resolved at the
18 pretrial conference. However, Motions in Limine may not reargue issues already
19 decided by the Court.
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1 **12. Pretrial Order**

2 **A. Generally**

3 A joint proposed pretrial order prepared in accordance with LCivR 16(e) shall
4 be filed on or before **June 26, 2023**, and a copy e-mailed, in Microsoft Word
5 format, to “riceorders@waed.uscourts.gov”.

6 **B. Exhibit List**

7 The list of exhibits contained in the Joint Proposed Pretrial Order shall reflect
8 the exhibit marking scheme described above. In preparing the Joint Proposed
9 Pretrial Order, the parties shall confer regarding duplicative exhibits and determine
10 which party will submit such exhibits for trial.

11 **13. Trial Briefs**

12 Trial briefs shall be filed and served on or before **June 26, 2023**. Trial briefs
13 shall not exceed twenty (20) pages without prior court approval. To obtain court
14 approval, a party must file a motion to file an overlength brief, demonstrating good
15 cause why supplemental briefing is necessary.

16 **14. Pretrial Conference**

17 An **in-person** pretrial conference will be held on **July 13, 2023, at 10:00**
18 **a.m.**, in Spokane Courtroom 902. All counsel trying the case must be present at
19 the pretrial conference.
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1 **15. Trial**

2 A bench trial shall commence on **July 24, 2023, at 9:00 a.m.**, in Spokane
3 Courtroom 902.


4 **IT IS SO ORDERED.**

5 The District Court Clerk is directed to enter this Order and provide copies to
6 counsel.

7 DATED October 20, 2022.



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THOMAS O. RICE
United States District Judge